

So Ordered.
Dated: August 16th,
2019



Frank L. Kurtz
Frank L. Kurtz
Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON**

IN RE:

MENSONIDES DAIRY, LLC,

ART & THERESA MENSONIDES,

Debtors.

Case No. 18-01861-FLK11

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**FINDINGS OF FACT &
CONCLUSIONS OF LAW RE:
CONFIRMATION OF CHAPTER
11 PLAN OF REORGANIZATION**

**FINDINGS OF FACT &
CONCLUSIONS OF LAW**

-1-

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1 This matter came on for hearing on August 14, 2019 on the request of
2
3 Mensonides Dairy, LLC and Art & Theresa Mensonides (collectively
4 **“Debtors”**) for confirmation of the Debtors’ proposed 1st Amended Plan of
5
6 Reorganization (**“Plan”**) ([Docket No. 479]. The Court has considered the
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8 Declaration of Art Mensonides as well as any testimony elicited or proffered
9
10 without objection at the confirmation hearing. No party in interest has filed a
11
12 formal objection to confirmation of the Plan. Based upon the evidence, the
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14 Court hereby finds and concludes as follows:

15 *I. Findings of Fact*
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17 1. The Debtors gave proper notice of their Plan and the hearing on
18
19 confirmation of the Plan to creditors and parties in interest as required by
20
21 FRBP 2002, LBR 2002-1 and LBR 3018-1 as well as other applicable
22
23 provisions of the Bankruptcy Code and Federal Rules of Bankruptcy
24
25 Procedure. Proof of service of such notice has been filed with the Court
26
27 (Docket No. 410, Docket No. 481].

28 2. The following classes of claims are impaired under the Plan:

29 Class 3: Priority Claim of the Internal Revenue Service
30 Class 4.1: Secured Claim of Northwest Farm Credit Services
31 FLCA:
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1 Class 4.2 Secured Claim of Northwest Farm Credit Services,
2 PCA
3 Class 5: Secured Claims OF Ag Country Farm Credit
4 Services
5 Class 6: Secured Claim of AgCo Finance, LLC
6 Class 7: Secured Claims of Balboa Capital
7 Class 8: Secured Claims of John Deere Construction &
8 Forestry Company
9 Class 9: Secured Claims of Northland Capital Financial
10 Services
11 Class 10: Unsecured Claims
12 Class 11: Secured Claims of Wells Fargo Home Mortgage
13 Class 12: Contingent Unsecured Claims
14 Class 13: Contingent Priority Claims
15 Class 14: Administrative Convenience Unsecured Claims

16 3. The Debtors have properly filed a Report of Balloting and Ballot
17
18 Summary in each of their cases. The Report of Balloting and Ballot
19
20 Summaries indicate that:

- 21 3.1 Classes 4.1 and Class 4.2 have voted in favor of the Plan;
22
23 3.2 Classes 3, 5, 6, 7, 8, 9, 11 and 14 did not vote for or against
24
25 the Plan;
26
27 3.3 Class 10 has voted in favor of the Plan;
28
29 3.4 Class 12 and Class 13 have voted to reject the Plan.
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1 4. No ballots other than those identified in the Report of Balloting
2 and Balloting Summary have been received by the Debtors.
3

4 5. One Hundred Percent of the creditors casting votes in Class 4.1,
5 Class 4.2, and Class 10 voted in favor of the Plan. One Hundred Percent of
6 the creditors casting votes in Class 12 and Class 13 voted to reject the Plan.
7
8

9 6. The Plan has been accepted in writing by at least one non-insider
10 class of impaired creditors, as required by 11 U.S.C. §1129(a)(10).
11
12

13 7. Subject to the changes in the Plan with respect to Class 13
14 creditors, as described below, the Plan complies with all provisions of Title 11
15 of the United States Code as well as other applicable law.
16
17

18 8. Paragraph 2.15(d) of the Plan is amended to read as follows:
19

20 **(d) Treatment.** Any Class 13 Claimant that fails to file a
21 proof of claim against the Debtors on or prior to the Class 13
22 Bar Date shall be barred from asserting a Class 13 Claim
23 against the Debtors and such claims shall be automatically
24 discharged upon confirmation of the Debtors' Plan. With
25 respect to timely filed Class 13 Claims, the Debtor shall have
26 ninety (90) days from the Effective Date in which to object to
27 such Class 13 Claims ("**Objection Period**"). If the Debtor fails
28 to file an objection to a Class 13 Claim within the Objection
29 Period that Class 13 Claim shall be paid in cash within five (5)
30 days after the expiration of the Objection Period. If the Debtor
31 files an objection to a Class 13 Claim within the Objection
32 Period, the Debtor shall seek to have the Bankruptcy Court
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1 determine the allowance and amount of such Class 13 Claim.
2 To the extent that: (a) the Bankruptcy Court enters a final order
3 holding that a particular Class 13 Claim is allowed; or (b) the
4 Debtor and the applicable Class 13 Claimant agree that the
5 Class 13 Claimant has an allowed Class 13 Claim, then such
6 Claimant shall be paid, in cash, on account of their Allowed
7 Class 13 Claim within fourteen (14) days of the allowance of
8 such Class 13 Claims. The Debtors shall retain all of their
9 rights, claims and defenses against the Class 13 Claimants
10 including the right to assert counterclaims, rights of offset and
11 claims for sanctions. Any untimely or disallowed Class 13
12 Claims shall be discharged pursuant to the Plan.

13 Such changes are necessary in order for the Plan to comply with 11 U.S.C.
14 §1129(a)(9)(B)(ii).

15
16 9. No creditor or party in interest has objected to confirmation of the
17 Plan. Pursuant to FRBP 3020(b)(2), the Court finds the Plan has been
18 proposed in good faith and not by any means forbidden by law.
19

20
21 10. All payments made or promised by the Debtors under the Plan for
22 services or for costs and expenses in, or in connection with, the Plan and
23 incident to the case, have been fully disclosed to the Court and are reasonable
24 and are hereby approved, or, if to be fixed after confirmation of the Plan, will
25 be subject to approval of the Court. No party is issuing securities or acquiring
26 property under the Plan.
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**FINDINGS OF FACT &
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1 11. Prior to filing of the Debtors' bankruptcy petitions, Mensonides
2 Dairy, LLC was owned one hundred percent (100%) by Art & Theresa
3 Mensonides. The reorganized debtor will be owned one hundred percent
4 (100%) by Art & Theresa Mensonides after confirmation (See Treatment of
5 Class 16 Claim at pg. 51 of Plan).
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10 12. After confirmation, the reorganized debtor intends to continue
11 employing the insiders who are described in Exhibit 5 to the Debtors'
12 approved 2nd Amended Disclosure Statement. The compensation for such
13 insiders is disclosed and governed by paragraph 3.6 of the Plan.
14
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16

17 13. With respect to each impaired class of claims described in the
18 Plan, the Plan will pay such claimants one hundred percent (100%) of the
19 principal balance of such claims, with interest, over time, as more specifically
20 described in the Plan.
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24 14. The Debtors have prepared a liquidation analysis, which is
25 attached to the Debtors' approved 2nd Amended Disclosure Statement. The
26 liquidation analysis demonstrates that in the event the Debtors were liquidated,
27 as opposed to reorganizing pursuant to the terms of the Plan, that creditors in
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1 Classes 4.1 – Class 14 would, more likely than not, receive less than one
2
3 hundred percent (100%) of the amount of their allowed claims.

4 15. The Court finds that creditors in Classes 4.1 - 14 will receive
5
6 more under the Debtors' Plan than they would receive if the Debtors were
7
8 liquidated pursuant to the provisions of Chapter 7 of the Bankruptcy Code.

9
10 16. Administrative Claimants in Classes 1 & 2 will be paid in cash
11
12 either: (a) upon the Effective Date of the Plan (unless any particular Claimant
13
14 agrees upon a different or less favorable treatment); or (b) upon approval of
15
16 such administrative claimants' fees and costs as required by applicable
17
18 Bankruptcy law. Such treatment complies with the requirements of 11 U.S.C.
19 §1129(a)(9)(A).

20
21 17. Class 3 Priority Tax Claims will be paid in cash within one
22
23 hundred twenty (120) days of the Effective Date. Such treatment complies
24
25 with the provisions of 11 U.S.C. §1129(a)(10) as such claims will be paid in
26
27 full in cash within five (5) years of the order for relief in this case. The
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29 treatment afforded to Class 3 is more favorable than the payment of claims of
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31 unsecured creditors.
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1 18. With respect to Class 13 Contingent Priority Claims, the Plan
2
3 complies with 11 U.S.C. §1129(a)(9)(B)(ii) because it provides for full
4
5 payment of such Class 13 claims in cash if such Class 13 claimants are able to
6
7 establish the validity of their claims.

8 19. Other than Class 1 & 2 Administrative Creditors and Class 3 Tax
9
10 Claims and Class 13 Contingent Priority Claims, the Debtors do not have any
11
12 creditors with claims pursuant to 11 U.S.C. §507(a).

13 20. The Debtors' approved 2nd Amended Disclosure Statement
14
15 describes the Debtors' proposed operations under the Plan. No creditor or
16
17 party in interest has objected to the feasibility of the Debtors' projected
18
19 operations under the Plan. The Court finds that it is more likely than not that:
20
21 (a) the Debtors' Plan is feasible; and (b) confirmation of the Plan will not be
22
23 followed by a liquidation of the Debtors. The feasibility of the Debtors' Plan
24
25 is further supported by the Debtors' operations during the course of the case
26
27 (as evidenced by the Debtor's monthly operating statements on file with the
28
29 Court).

30 21. Classes 1, 2, 13 (after the changes described in paragraph 8,
31
32 above), 15 and 16 are unimpaired or not entitled to vote on the Plan.



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**FINDINGS OF FACT &
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1 22. The Debtors are current in the payment of the quarterly fees
2
3 payable to the United States Trustee. The Plan provides for the payment of all
4 United States Trustee fees payable under 28 U.S.C. §1930.
5

6 23. All payments to insiders of the Debtors during the course of the
7
8 case have been disclosed.
9

10 24. Classes 5, 6, 7, 8, 9, 11 (“Non-Voting Classes”) have neither
11
12 accepted nor rejected the Plan. As a result, the Plan does not comply with 11
13 U.S.C. §1129(a)(8). The Non-Voting Classes are secured creditors. The
14
15 Court finds that the treatment of the Non-Voting Classes under the Plan is fair
16
17 and equitable for the following reasons:
18

19 24.1 The Plan provides that creditors in the Non-Voting Classes
20
21 will retain any security which secures such creditors’ claims until such claims
22
23 have been paid in full;
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25 24.2 The Plan provides for the payment of one hundred percent
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27 (100%) of the principal amount of such claims in the Non-Voting Classes over
28
29 time; and
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1 24.3 The Plan provides for interest payments to holders of
2
3 claims in the Non-Voting Classes until such claims have been paid in full in
4
5 accordance with the terms of the Plan.

6 25. Class 14 did not vote on the Plan. Class 14 is a convenience class
7
8 which allows creditors with allowed unsecured claims to elect to be treated as
9
10 a member of Class 14. A creditor may only be included in Class 14 if it elects
11
12 to, which is equivalent to accepting the treatment proposed in the Plan. As a
13
14 result the Plan complies with 11 U.S.C. §1129(a)(8) with respect to such Class
15
16 14 Claimants.

17 26. The Effective Date of the Plan is the first business day following
18
19 the date on which the Confirmation Order becomes a final non-appealable
20
21 order.

22 27. Substantial Consummation of the Plan will occur upon the
23
24 making of the first payment to a creditor in Class 3 – Class 14 according to the
25
26 terms of the Plan.

1 *II. Conclusions of Law*

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3 Based upon the foregoing findings of fact, the pleadings filed in this
4 case and the testimony and other evidence provided at the confirmation
5 hearing, the Court concludes that:
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7
8 A. The requirements for confirmation of the Plan imposed by the
9 Bankruptcy Code, Federal Rules of Bankruptcy Procedure and other
10 applicable law, including the requirements of 11 U.S.C. §1129 have been met.
11

12
13 B. The Plan should be confirmed.
14

15 C. To the extent that the above entered findings of fact are, in fact,
16 conclusions of law, such findings are hereby incorporated into these
17 conclusions of law and should be denominated as such.
18

19
20 D. The provisions of Chapter 11 have been complied with and the
21 Plan has been proposed in good faith and not by means forbidden by law.
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24 E. Any and all payments for which Bankruptcy Court approval is
25 required, including authorization required by 11 U.S.C. §§327 and 330, shall
26 remain subject to Bankruptcy Court approval notwithstanding confirmation of
27 the Plan.
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1 F. The Debtors have disclosed the identity and affiliations of all
2 parties who are to serve as officers and directors under the Plan. The Debtors
3 have disclosed the identity of all insiders who will be paid a salary or
4 consulting fees under the Plan. The Debtors' disclosures satisfy the
5 requirements of 11 U.S.C. §1129(a)(5).
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9 G. No governmental regulatory commission is required to approve
10 the Plan or the terms of the Plan.
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13 J. The Debtors' Plan satisfies the requirements of 11 U.S.C.
14 §1129(a)(7) in that each impaired class that has not accepted the Plan will
15 receive value, as of the Effective Date of the Plan, that is not less than the
16 amount such claimant would receive if the Debtors were liquidated under
17 Chapter 7 of the Bankruptcy Code.
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22 K. The only Classes entitled to vote on the Plan who have not
23 accepted the Plan are the Non-Voting Classes. However, the Plan is fair and
24 equitable with respect to the treatment of the Non-Voting Classes pursuant to
25 11 U.S.C. §1129(b)(2)(A). As a result, the Plan can be confirmed
26 notwithstanding the provisions of 11 U.S.C. §1129(a)(8).
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1 L. Administrative & Priority Claims described by 11 U.S.C. §503(b)
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3 and 11 U.S.C. §507(a)(2) are provided for as required by 11 U.S.C.
4 §1129(a)(9).
5

6 M. At least one impaired class of claims has accepted the Plan and
7
8 the Plan therefore meets the requirements of 11 U.S.C. §1129(a)(10).
9

10 N. Confirmation of the Plan is not likely to be followed by the
11
12 liquidation, or the need for further financial reorganization of the Debtors.
13

14 O. The Effective Date of the Plan will be the first business day
15
16 following the date on which the Confirmation Order becomes a final non-
17
18 appealable order.

19 P. The Debtors are authorized and directed to begin consummation
20
21 of the Plan on the Effective Date, including through the execution, ratification,
22
23 and implementation of all loan and security documents authorized or
24
25 contemplated by the Plan.

26 Q. Substantial Consummation of the Plan will occur upon the
27
28 making of the first payment to a creditor in Class 3 – Class 14 according to the
29
30 terms of the Plan.
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1 R. Creditors and parties in interest were given proper notice of the
2 confirmation hearing.
3

4 S. No objections to confirmation of the Plan were filed. The
5 potential objection to confirmation of Class 13 Contingent Priority claimants
6 has been resolved by modifying paragraph 2.15(d) of the Plan in the manner
7 provided in Finding 8, above.
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10

11 / / / End of Order / / /
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17 Presented By:
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19

20 /s/ Steven H. Sackmann
21

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**FINDINGS OF FACT &
CONCLUSIONS OF LAW**

1 /s/ Toni Meacham

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